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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,783	10/17/2003	Richard R. Heuser	HEU 309	9851
23581	7590	11/01/2006	EXAMINER	
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			GHERBI, SUZETTE JAIME J	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/687,783

**Applicant(s)**

HEUSER, RICHARD R.

**Examiner**

Suzette J. Gherbi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2006 and 28 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/20/06; 7/27/06</u>  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Applicant's RCE and IDS dated 7/27/06 have been received in application serial number 10/687,783. Further applicant Declaration dated 2/28/06 has been received and reviewed.

#### ***Declaration***

2. The declaration filed on 2/28/06 under 37 CFR 1.131 has been considered but is ineffective to overcome the Golds et al 2004/0162603 reference.

3. While applicant has submitted a declaration with exhibits that are found to support conception of the invention prior to the effective date of Golds, such exhibits do not support actual reduction to practice of the invention prior to the effective date of Golds. Actual reduction to practice must be shown through evidence that the device was actually built/used for its intended purpose. Proper evidence could be in the form of construction data, test, data, receipts of purchase for parts, ect. The attached drawings of Exhibit A do not constitute such evidence.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 8-9, 13 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Golds et al. 2004/0162603. Golds et al. discloses the invention as claimed noting figure 1 comprising: A stent (2) with an inner layer providing a first flexible covering (4); an outer layer providing a second flexible covering (6) and a middle wire mesh layer (2) between the inner and outer layers, the wire mesh layers being self-expandable; wherein the inner and outer layers are PTFE [section 0014].

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 10-11 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golds et al. in view of Chouinard 6,709,455. Gold has been disclosed above however Golds does not specify the use of nitinol or radiopaque

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material. Chouinard teaches a stent-graft that utilizes nitinol (see col. 8, lines 22-28) and radiopaque material (21) see col. 7, lines 42-470. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the metal stent portion of Golds from nitinol because Golds states in section [0025] that the stent can be self-expandable and nitinol is a material widely used in the art vascular prosthesis art known for this properties. It also would have been obvious to one having ordinary skill in the art to provide a radiopaque material on *any* location of the device because it is well known that radiopaque material helps the surgeon to track the correct placement of the stent-graft.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Golds in view of Cook et al. 2004/0082989. Golds has been disclosed above however Golds does not specify that the film layer extends beyond the ends of the middle layer. Cook et al. teaches a stent graft wherein the ends of the graft material extend beyond the mesh layer (see figure 10 and section [0041]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to extend the film layer to any length beyond the mesh layers in order to help encase the mesh layers and/or to help protect the blood vessel from the ends of the mesh.

### ***Conclusion***

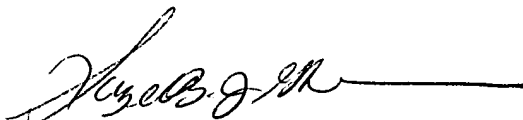
10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 571-272-4751.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

A handwritten signature in cursive script, appearing to read 'Suzette Gherbi', followed by a horizontal line.

25 October 2006

SUZETTE GHERBI  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3700